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"Corporate Governance in India"

Sofiya Mhaisale
Symbiosis Law School,
Pune

Abstract

Human Society needs governance, and whenever power is exercised to direct or regulate the social activity affecting people's interest, governance comes into force. Corporate Governance includes the way directors control the activities of the company by ensuring that the management to whom functions are delegated are accountable.

Although there have been various attempts by the Indian Government and other corporate structures to improve the corporate governance in the country, there have been various voids and lacunae which have not made these steps a complete progress. It can be seen effectively that with time, the establishment of board committees, the posts like CEO and Chairman and their independence, and the involvement of workers participation programs for improving corporate governance have been attempted by various organisations to improve the corporate structures in the country.

However, there have been various drawbacks due to ineffective implementation, corruption scandals, non-independence of the independent directors, etc. This paper will analyse a few aspects related to the corporate structures in the country, of how there have been measures taken to improve the working of such structures, and how these structures have proved inadequate

The paper will be divided into three aspects: Firstly focusing on the Board Committees established in India, looking at current examples of big companies, and their relevancy for effective governance. Secondly, the important role played by the CEO and Chairman in a company will be considered, highlighting their role with regard to the current trend of corporate misconducts. Lastly, the role played by the employees will be highlighted analyzing the companies actually implementing this in India.

Corporate Governance Defined

Corporate Governance, with its origin and current form has generally been concerned with the Board of Directors, its structure, style and processes, followed by their relationships, role and linkages, as well as the roles of company's members, auditors etc. It may be influenced by various factors, like Historical Development, different countries and circumstances prevailing at a point of time. Eg. The Appointment of the Cadbury Committee[1] and adoption of Cadbury report was due to the inadequacy of financial control and accountability. France

[1] Icaew.com. (2019). *The Cadbury Report*. [online] Available at: https://www.icaew.com/technical/corporate-governance/codes-and-reports/cadbury-report [Accessed 30 Jan. 2019].

involves the concern of corporate governance to mean the oligarchy of chief executives directing big corporations, rotating them amongst shareholders.

It is concerned with the process by which corporate entities, particularly limited liability companies are governed.[2] A corporate body is an inanimate object, and modern corporations are like private units with public obligations, their roles are beyond profit maximization.[3] Redefining the nature of the company, its control along with examining its responsibilities and obligations owed to the shareholders, workers, creditors etc. is required.

Issues and Questions raised

In India, the economic initiatives in 1991, the Government of India responded to the developments in the World, and the recommendations of the Cadbury Committee Report were given prominence. The Confederation of Indian Industry, the Associated Chambers of Commerce and Industry and, the Securities and Exchange Board of India (SEBI) have constituted committees for implementing the recommendations initiatives in Corporate Governance

The paper will primarily focus on **the steps that have been taken to improve the current state of corporate governance in India.**

The primary questions raised in the paper are on the basis of the following topics:

1) Whether the ***board committees which have been established in India*** are relevant to contribute to the corporate governance structures in the country?
2) What is the contribution of important personalities of the companies, including the Board ***Chairman and the CEOs*** to the Corporate Governance of a Country?
3) Whether the scheme of ***participation of workers for improving corporate governance*** has been helpful in companies?

Board Committees

Introduction:

With an increase in the number of non-executive directors[4] on the board, along with frequent convening of Board meetings becoming increasingly difficult, it is tough to achieve sufficient discussion or arrive at a satisfactory resolution in meetings. This provides the need for the establishment of internal committees consisting of directors with expertise to ensure sound governance. This allows the board to raise the standard of performance, professionalism and efficiency in carrying out their duties. Matters requiring deep thinking and discussion are

[2] Investopedia. (2019). *Corporate Governance*. [online] Available at: https://www.investopedia.com/terms/c/corporategovernance.asp [Accessed 29 Jan. 2019].
[3] Investor.hcahealthcare.com. (2019). *Corporate Governance | HCA Investor Center*. [online] Available at: https://investor.hcahealthcare.com/corporate_governance [Accessed 30 Jan. 2019].
[4] A non-executive director is that member of a company's board of directors who does not form a part of the executive team. He generally does not engage in the day to day management of the organization, but plays an important role in the policy making and planning exercises.

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delegated to these committees and the resolutions of the committee have the same effect as the board.

Types of Committees

1) Audit Committee: It is one of the most significant board committees since it consists wholly of non-executive independent directors[5], headed by an outside chairman. In the 19th century, auditors used to be drawn from the shareholders of the company, but with increasing management from its owners, they became more professional and closely involved in management. The ***Metcalf Report 1976 of USA***[6] questioned the objectivity and perceived independence of an auditor, dependant on the company for his continuation as an auditor. The **RBI** took the initiative of setting up the audit committee pursuant to the Parliamentary Committee Report (1991)

   The functions of the audit committee depend upon the circumstances of each organization, in particular the size, complexity etc. An important characteristic of it is its independence from the management. Some of the key functions of the committee are:

   1. Discussion with independent auditors about the problems of completing the audit
   2. Discussion with regard to the scope and timing of audit work
   3. Discussion on the meaning and significance of audited figures
   4. Approval and nomination of independent directors
   5. Discussion on adequacy of staffing for internal audit
   6. Discussion on procedures to prevent conflict of interest, bribes and improper payments
   7. Ensuring statutory compliances and reviewing financial data before releasing it to press or shareholders.
   8. Reviewing the accounting principles, policies, practices adopted in preparation of annual accounts of the company

   Section 177 of the Companies Act, 2013 and Rule 6 and 7 of the Companies (Meeting of board and powers) Rules, 2014 deals with audit committees in India. the Companies Act, 1956 requires the audit committee to have a minimum of three directors besides such number of directors as the board may determine and two thirds of which shall be other than managing or whole-time directors, with independent directors forming a majority. The paid-up share capital or the turnover or the outstanding loans, or the borrowings or debentures or deposits as existing on the date of last audited Financial Statements shall be taken into account for the purposes of

[5] An independent director can be defined as a non-executive director of a company, who helps in improving corporate credibility, and governance standards. He does not have any relationship with the company which may affect the independence of his judgment.

[6] Society, S. (2019). *Securities and Exchange Commission Historical Society*. [online] Sechistorical.org. Available at: http://www.sechistorical.org/museum/galleries/rca/rca05e-congress-gets-involved.php [Accessed 30 Jan. 2019].

this rule. There has been an increasing trend to have all these members financially literate.[7]

The committee provides an assurance to its shareholders that the relationship between the management and auditors is completely objective and a fair opinion has been provided in the financial statements. It can act as a safety valve, and a company can enhance the utility of audit committee by assigning it the task of performance, procedure and evaluation rather than confining their role to an agency responsible for seeing the accounts of the company.

It is better for the board to adopt a formal charter[8] for the committee, since it signifies what an audit committee can or cannot do. It ensures the existence and compliance of internal control systems, to promote financial transparency in financial reporting process, and establishing the role, structure, composition, terms of reference and reporting requirements.

2) *Remuneration Committee*: The importance of the remuneration committee has highlighted in 1980s when the executive salaries took a steep rise without any proportional performance for the same. Constitution of the committee required people who were not only independent of the management influence, but also possessing business acumen to deal with the hurdles in providing for remuneration. The committee is a critical link between the establishment and administration of sound and effective remuneration programme. However, it is better to have a committee charter for this as well, detailing the policy for remuneration settlement.[9]

3) *Nomination Committee*: The existence of this committee adds to the professionalism and objectivity to the process of deciding membership of the board. Some of the key tasks involve nomination, selection and evaluation of directors. This committee generally constitutes of outside directors, the strength varying from four to five, and independent non-executive directors are preferred. The CEO may be invited to attend the committee as a non-voting member. Every few years, the committee should review the board for new factors, find the lacunae and have discussion for resolving them. Another important function includes evaluation of the CEO in terms of the evaluation format. Individual directors can provide for certain appraisals compiled with a report.

Despite the need and establishment of most of the above committees, there has still been ineffective corporate governance. Therefore, presently, demands are being made for the establishment of a Corporate Governance committee to levy a heavy burden on

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[7] Mautz, R.K and Neumann, F.L, The Audit Committee, its growth and significance in corporate structure, CPA Journal, July, 1972
[8] Bansal, *Corporate Governance in India*, Taxmann, 6th Edition, Pg. 340
[9] Lexicon.ft.com. (2019). *Remuneration Committee Definition from Financial Times Lexicon*. [online] Available at: http://lexicon.ft.com/Term?term=remuneration-committee [Accessed 31 Jan. 2019].

the traditional committee structures. Tasks like shareholder's liaison, succession planning, CEO evaluation etc. delicate are matters that could be influenced, therefore highlighting the need for an independent governance committee, handled by specialized committee consisting entirely of outside directors. Presently, extremely few companies in India, and about 7% companies in the USA have such a committee.

Analysis

The need for establishing these boards is felt due to the growing specializations and modern work load. These committees have therefore become power centres in their own right, and place accountability on known groups. Therefore, they play an important role in the smooth functioning of the board by fulfilling the clearly defined responsibilities. The committee meetings also help to facilitate the exchange of information among directors, and between directors and shareholders. However, their functions must be limited and defined in order to prevent them from becoming too powerful.[10]

Currently, in India, various big companies have adopted these committees into their management to improve corporate governance. The remuneration committee of ***Infosys Technologies***[11] consists totally of non-executive independent directors. It mandates and reviews the compensation payable to the executive directors and senior management. It also plays a key role in administering the company's stock options to eligible employees, followed by reviewing the performance of directors quarterly. It also evaluates the usefulness of these prescribed performance parameters and makes amendments.

The remuneration committee has not been established in most companies in India, but its need is felt due to the rising current examples of arbitrary amount of compensation granted in terms of remuneration or "special bonus" to the directors. In the year 2005, the salary of the ***Managing Director of Jindal Steel and power, Mr. Naveen Jindal***[12] took a hike by a massive 248% to 13.54 Crores despite the stagnant profit growth of the company, observed to be 23%. Similarly, the same year also saw the managing director of ***Hero Honda, Pawan Kant Munjal*** to receive a rise in his salary by 15% despite the net profits declined at the rate of 11%.[13] The unprecedented hike of salary of ***Sunil Mittal, the CEO of Bharti Mittal*** by 78% also stood as a prominent example to highlight the need for a body like the renumeration committee.[14] It is extremely easy for the directors to escape liability for this by proving that the bonuses granted to them form a part of their renumeration, and are not paid out of the profitable dividends.

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[10] Ram Charan, Boards that Work: How Corporate Boards Create Competitive Advantage, Jessey-Bass Inc., San Francisco, Pg. 42

[11] Limited, I. (2019). *Navigate your next*. [online] Infosys.com. Available at: https://www.infosys.com/ [Accessed 30 Jan. 2019].

[12] Indialawjournal.org. (2019). *India Law Journal*. [online] Available at: http://www.indialawjournal.org/archives/volume3/issue_3/article_by_sadapurna.html [Accessed 30 Jan. 2019].

[13] Scribd. (2019). *hero honda | Dividend | Motorcycle*. [online] Available at: https://es.scribd.com/document/120417089/hero-honda [Accessed 30 Jan. 2019].

[14] *Business News, 18 Sep 2016 | 15 Minute News - Know the News*. [online] Available at: https://www.15minutenews.com/business/2016/09/18/#! [Accessed 30 Jan. 2019].

Similarly, the nomination committee also plays an extremely important role in corporate governance. The nomination committee at ***Infosys Technologies consisting of Prof. Jeffrey S. Lehman*** as the chairperson has a mandate to recommend the size and composition of the board, and establish procedures for nomination process and recommend candidates for election to the board.[15] The nomination committee of ***Tata Steel, headed by Mrs. Mallika Srinivasan*** is bestowed with the overall responsibility of evalution and approval of the compensation programmes, policies and plans for the senior management. The Committee carries forward the important task of reviewing and recommending to the Board on matters which concern the base salary incentives or other benefits, arrangement or compensation, followed by executive employment agreements for ED's approval.[16] It also coordinates and checks the annual self-evalution of the Board's performance, also including the committees and directors.

Conclusion

It can be observed that due to the absence of these committees, there have been various acts of corporate mis-governance in the country. From the above examples, it can be analyzed that the establishment of these committees is pivotal to smooth corporate governance. They act as watchdogs over the acts of the board and play an important role in preventing mishaps in the committee. With the evolution of the structure of the companies it is important for them to incorporate these committees for the betterment of the shareholders and stakeholders in the company.

The Board Chairman and CEO

Introduction

They are important personalities that play an important role in determining the effectiveness of the board as well as the management team, by constituting a link between the board and management. They also represent the company before the shareholders, government etc. In company law, there is no such thing as a chairman, but only directors who from themselves elect a chairman.[17] He is equally responsible for conducting the affairs of the company, settles the agenda for the board meetings, determines the manner of presentation of information, elicits the views of the directors and helps the board to take timely decisions.

Effective corporate governance is founded on the bedrock of a strong and independent board, with the reins being in the hands of the chairman. Standing at the pinnacle of the

[15] Infosys.com. (2019). *Corporate governance report | Infosys Annual Report 2016-17*. [online] Available at: https://www.infosys.com/investors/reports-filings/annual-report/annual/Documents/AR-2017/corporate-governance-report.html [Accessed 30 Jan. 2019].

[16] Vijayaraghavan, K. and Philip, L. (2019). *Mallika Srinivasan's absence at TGB board meet raises eyebrows*. [online] The Economic Times. Available at: https://economictimes.indiatimes.com/news/company/corporate-trends/mallika-srinivasans-absence-at-tgb-board-meet-raises-eyebrows/articleshow/55103098.cms [Accessed 30 Jan. 2019].

[17] CAclubindia. (2019). *Short Note on Chairman of the Company*. [online] Available at: https://www.caclubindia.com/articles/short-note-on-chairman-of-the-company-15760.asp [Accessed 30 Jan. 2019].

organizational pyramid, his role is fundamental within the system of corporate governance. He has to analyze carefully the inside knowledge of executive directors and external perspective of non-executive directors. Also being responsible for maintenance of balance between the board and the management, he has to ensure that all relevant issues are incorporated into the agenda, and all directors are enabled to play their role in making decisions by the board

The Chief Executive Officer or the Managing Director is responsible for the operational mismanagement and profitability of the company. For good governance, the CEO's position should be kept separate from the chairman, due to the very nature of his responsibility to execute corporate strategy, monitoring the management on behalf of the shareholders, etc.[18] He is appointed by the board, and is accountable to it for his actions. He is expected to function optimally and take a balanced view of the interest of all stakeholders. However, he cannot be the sole arbiter of corporate governance.

Some of his major functions which contribute to effective corporate governance are reviewing the systems and procedures periodically by professionals, seeking the opinion of the chairman in case of doubt and putting forward these unresolved differences for debate before the board, establishing harmonious relations with non-executive directors and to provide information needed for taking decisions, to spot talent among the executives and encourage promotion to board, to submit his performance for evaluation by the board, etc.

Analysis

Although one of the purposes of such positions was to improve the corporate governance the country, this has not been effective and true, the chairmans and CEOs themselves have been involved in fraudulent activities. Even in the cases where such people are honest and have been working for the betterment of the company, they have been often made to resign, or have been removed from their positions. Therefore, effectively, the authority of these designations has not been effective in improving corporate governance.

The **Tata-Mistry** dispute gave rise to corporate governance issues, which needed to be considered against the backdrop of the Tata corporate structure and corporate governance laws in India. The ousted ***Chairman of Tata Group, Cyrus Mistry*** stated that, during his tenure he has not been conferred with enough independence to carry out operations [19]and there was continued interference from the then 'Emeritus' Chairperson. A larger corporate

[18] Abubakar, H. (2019). *The Impact of Sound Corporate Governance on Organizational Performance*. [online] Academia.edu. Available at: http://www.academia.edu/2767584/The_Impact_of_Sound_Corporate_Governance_on_Organizational_Performance [Accessed 30 Jan. 2019].

[19] IndiaCorpLaw. (2019). *The Tata Corporate Governance Episode: The 'India-Specific' Issues and Concerns - IndiaCorpLaw*. [online] Available at: https://indiacorplaw.in/2017/09/tata-corporate-governance-episode-india-specific-issues-concerns.html [Accessed 30 Jan. 2019].

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governance issue that is involved is the wider implication of creating such 'honourable positions' like those of chairman emeritus and director emeritus in favour of the promoters.[20]

Vishal Sikka, CEO of Infosys, had stepped down due to allegations by the founders of the company, Narayana Murthy in particular of corporate governance violations at taking place Infosys.[21] Some of the major issues included the salary of the CEO, severance pay of the former CFO Rajiv Bansal and appointment of Punita Sinha as the independent director. In the recent case of ICICI, where the ***CEO of ICICI, Chanda Kocchar*** has been blamed for corporate misconduct and ineffective governance due to the allegations of impropriety in the company.[22]

Anil Ambani has also been accused of mis-governance in ***RCOM***,[23] followed by ***Sun Pharmaceutical Industries***, which is India's largest pharma company has been under various allegations of mis-governance and insider trading, due to the acts of the ***CEO Dilip Shanghvi***. ***Subrata Roy***, the ***Chairman of the Sahara group*** has been under similar allegations.

<u>Conclusion</u>

It can be concluded that although the reason of such appointments is to strengthen the corporate structure, they still have not been independent in functioning and have often been involved in various activities of mis-governance. There is a need to have a check on the posts of these authorities in order to ensure that the functions are performed without any self-interest, in order to avoid all kinds of related party transactions in the company, and prevent the shareholder's money from being used for fraudulent purposes.

Participation of Workers in Corporate Governance

<u>Introduction</u>

In a democratic institution, its constituents have voice through their representatives for implementation of policies. The employees play an important role to exert influence on the manner in which business entreprise is run. Advocates of employee participation in governance structures relate it directly or indirectly to its impacts on the corporate performance. It enables the employees to monitor the management and acts as a morale-booster leading to improvement in the quantity and quality of output, furthering the better utilization of inputs and introduction of new techniques. A survey of the European

[20] Tata Sons Limited & Others v. Ratan N. Tata & Ors **2017 SCC OnLine Bom 5269**

[21] Moneycontrol. (2019). *Why 'corporate governance' has been Infosys' most dreaded term in 2017*. [online] Available at: https://www.moneycontrol.com/news/business/why-corporate-governance-has-been-infosys-most-dreaded-term-in-2017-2363863.cms [Accessed 30 Jan. 2019].

[22] Singhal, R. (2019). *Corporate governance lessons from IDBI-LIC deal and ICICI Bank*. [online] https://www.livemint.com. Available at: https://www.livemint.com/Opinion/lZyJI5xaUJtIL3nLuJY6pK/Corporate-governance-lessons-from-IDBI-LIC-deal-and-ICICI-Ba.html [Accessed 30 Jan. 2019].

[23] The Economic Times. (2019). *Ambani company running out of money*. [online] Available at: https://economictimes.indiatimes.com/tech/hardware/did-you-ever-think-of-an-ambani-company-going-bankrupt/articleshow/64190348.cms [Accessed 30 Jan. 2019].

Foundation for the Improvement of Living and Working Conditions[24] revealed that half the managers in the European Union reported positive effects of the employees participation on acceptance of new technology and enhanced the utilization of skills by the employees.

Employees spend their entire life working in organisations, and have more knowledge and information about the tasks and processes compared to the managers, and also more than the shareholders who are supposed to control the managers. They share a vested interest in improving performance. Employees participation is found to have a positive effect on improving productivity. It also shifts the decisions and conflict resolution to intra organizational industrial conflicts becoming partially internalized into the economic organization itself. The employees interest like job security, working conditions, rationalization etc. no longer remain external factors. Germany is the most prominent example on how the labour participation has helped country's business organizations adopt new technology. In iron, steel and coal industries, there has been workers' representation on the supervisory boards of the Companies since 1951.[25]

The main objective of recognizing workers as stakeholders and providing them representation in corporations is to gain the competitive edge which ensures the establishment of environmental and mutual trust. It also secured more workers' loyalty and commitment to the goals of the organisations. They could participate through board level participation, profit sharing or financial participation, combination of participation in decision making and profit sharing and lastly, consultation and information.

Forms of Workers Participation in Management in India

1. *Suggestion schemes***:** Worker's participation in India can take place through suggestion schemes, under which they are invited and encourages to suggest for improving the working structure of the enterprise, and the reforms that can be bought. This is also carried out by means of a suggestion box installed in the office. A suggestion box is installed and any worker can write his suggestions and drop them in the box. Periodically, these suggestions will be scrutinized by the suggestion committee or suggestion screening committee, which is constituted by equal representation from management and workers. The committee plays a role in screening various suggestions received from workers, and good suggestions are accepted for implementation and suitable awards given for them. This encourages workers' interest in the functioning of the enterprise

2. *Works committee***:** In India, Under the Industrial Disputes Act, 1947 mandates that every establishment employing 100 or more workers should constitute a works committee. Such a committee would consist of equal representatives from the employer and the employees. The main object of forming this committee is to provide

[24] Gill C(1993), *Issues of Participation in Technological Innovation, Attitudes and Experiences in the EC,* European Foundation for the Improvement of Living and Working Conditions.
[25] Yavasi, Shareholding and Board Structures of Germany and UK Companies, 22. The Company Lawyer, No. 2, pp. 47-52

of this committee is to provide for measures of securing & preserving amity and good relations between employer and employees.

Analysis

Although the idea of such participation is capable to improving and strengthening the corporate structure, still India has not been very effective in the implementation of such ideas because of various reasons:

1) For the union or the worker representatives, they are required to play double roles, which makes their participation difficult the double roles they are required to play make participation quite difficult;
2) The management committees are reluctant to share
3) The differences in social status, education and awareness between the parties obstructs transparency and trust.
4) The unions end up being a party to decisions which they are not even influencing.
5) Real participation cannot be continued for a very long time in the current context. It might prove successful in one particular context and in one particular crisis, but may be very difficult to sustain, especially when conditions improve or change completely.

However, some of the most major changes in this regard have occurred in ***the Corporations of India*** during the last two decades in the wake of economic liberalization, where various unions like ***CITU and HMS*** have been playing an active role in Maharashtra for long, especially among Mumbai. Being able to provide interesting information on the labor scenario in the city and the state, according to the unions, there is a need for such them to expand and grow, since they have dispersed either to other parts of India, or have closed down. The three large private sector plants of Mumbai, ***Mahindra & Mahindra, Godrej & Boyce and Larsen & Toubro*** have introduced such changes and It helps them in improving the corporate governance

Conclusion

Therefore, it is observed that although the purpose of inclusion of workers into the policies of corporate governance is to improve management, it has not been effective, except for big industries who have adhered to this.

Conclusion

Corporate Governance is a new terrain in India, and it has evolved in its own sphere. Beginning with the absence of any check on the powers of the Board, to finally arriving at a stage where independent bodies are appointed to check the powers of it, the corporations have come have progressed multifold in implementing policies for effective corporate governance. As analysed in the above examples, to avail full advantage of the new policies of liberalization and globalization, the companies should adhere to a well framed code for corporate governance. They must have well-defined and transparent corporate policies along with the ability to make rational investment decisions, which focus on core competencies and adhere to the commercial regulations and international laws accepted in India

As seem above, governance has two aspects. First, the Internal Aspects, which refer to the set of organizational rules in a company and includes sound internal processes, corporate philosophy, good leadership and the mindset and sense of responsibility of the law (as seen for the CEOs and Chairmans of the Board) Second, the external aspects that are reflected from the corporate entities focus on profit maximization and existence of healthy relationships between the company and its stakeholders. In order to ensure good corporate governance, the existence of both of these aspects in a balance manner is required.

Today, Corporate Governance is an important element in building up international competitiveness, since each nation needs strong boards, corporate management and investors, working together in an environment of tension. The purpose of this is to achieve a responsible management and control of the corporation. Therefore, it is important to realize its need along with the implementation of policies which could help to make these structures stronger and more effective.

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